



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XE503**

**Takes of Marine Mammals Incidental to Specified Activities; Seabird Monitoring and Research in Glacier Bay National Park, Alaska, 2016**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, we, the National Marine Fisheries Service (NMFS), hereby give notification that NMFS has issued an Incidental Harassment Authorization (IHA) to Glacier Bay National Park (Glacier Bay NP), to take marine mammals, by Level B harassment, incidental to conducting seabird monitoring and research activities in Alaska, May through September, 2016.

**DATES:** Effective May 16, 2016 through September 30, 2016.

**ADDRESSES:** The public may obtain an electronic copy of Glacier Bay NP's application, supporting documentation, the authorization, and a list of the references cited in this document by visiting:

*<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>*. In the case of problems accessing these documents, please call the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Robert Pauline, NMFS, Office of Protected Resources, NMFS (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

An Authorization shall be granted for the incidental taking of small numbers of marine mammals if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The Authorization must also set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat; and requirements pertaining to the mitigation, monitoring and reporting of such taking. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to

injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or  
(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

### **Summary of Request**

On January 12, 2016, NMFS received an application from Glacier Bay NP requesting that we issue an Authorization for the take of marine mammals, incidental to conducting monitoring and research studies on glaucous-winged gulls (*Larus glaucescens*) within Glacier Bay National Park and Preserve in Alaska. NMFS determined the application complete and adequate on February 25, 2016.

NMFS previously issued two Authorizations to Glacier Bay NP for the same activities in 2014 and 2015 (79 FR 56065, September 18, 2014 and 80 FR 28229, May 18, 2015).

Glacier Bay NP proposes to conduct ground-based and vessel-based surveys to collect data on the number and distribution of nesting gulls within five study sites in Glacier Bay, AK. Glacier Bay NP proposes to complete up to five visits per study site, from May through September, 2016.

The activities are within the vicinity of pinniped haulout sites and the following aspects of the proposed activities are likely to result in the take of marine mammals: noise generated by motorboat approaches and departures; noise generated by researchers while conducting ground surveys; and human presence during the monitoring and research activities. NMFS anticipates that take by Level B harassment only, of individuals of harbor seals (*Phoca vitulina*) would result from the specified activity.

Although Steller sea lions (*Eumetopias jubatus*) may be present in the action area, Glacier Bay NP has proposed to avoid any site used by Steller sea lions, therefore, take is not requested for this species.

### **Description of the Specified Activity**

#### *Overview*

Glacier Bay NP proposes to identify the onset of gull nesting; conduct mid-season surveys of adult gulls, and locate and document gull nest sites within the following study areas: Boulder, Lone, and Flapjack Islands, and Geikie Rock. Each of these study sites contains harbor seal haulout sites and Glacier Bay NP proposes to visit each study site up to five times during the research season.

Glacier Bay NP must conduct the gull monitoring studies to meet the requirements of a 2010 Record of Decision for a Legislative Environmental Impact Statement (NPS, 2010) which states that Glacier Bay NP must initiate a monitoring program for the gulls to inform future native egg harvests by the Hoonah Tlingit in Glacier Bay, AK. Glacier Bay NP actively monitors harbor seals at breeding and molting sites to assess population trends over time (*e.g.*, Mathews & Pendleton, 2006; Womble *et al.*, 2010). Glacier Bay NP also coordinates pinniped monitoring programs with NMFS' National Marine Mammal Laboratory and the Alaska Department of Fish & Game and plans to continue these collaborations and sharing of monitoring data and observations in the future.

#### *Dates and Duration*

The Authorization would be effective from May 16, 2016 through September 30, 2016. Following is a brief summary of the activities.

Glacier Bay NP proposes to conduct a maximum of three ground-based surveys per each study site and a maximum of two vessel-based surveys per each study site. NMFS refers the reader to the notice of proposed Authorization (81 FR 15684, March 24, 2016) for detailed information on the scope of the proposed activities.

#### *Specified Geographic Region*

The proposed study sites would occur in the vicinity of the following locations: Boulder (58° 33' 18.08" N; 136° 1' 13.36" W), Lone (58° 43' 17.67" N; 136° 17' 41.32" W), and Flapjack (58° 35' 10.19" N; 135° 58' 50.78" W) Islands, and Geikie Rock (58° 41' 39.75" N; 136° 18' 39.06" W) in Glacier Bay, Alaska. Glacier Bay NP will also conduct studies at Tlingit Point Islet located at 58° 45' 16.86" N; 136° 10' 41.74" W; however, there are no reported pinniped haulout sites at that location.

#### *Detailed Description of Activities*

Glacier Bay NP proposes to conduct: (1) ground-based surveys at a maximum frequency of three visits per site; and (2) vessel-based surveys at a maximum frequency of two visits per site from the period of May 16 through September 30, 2016.

*Ground-Based Surveys:* These surveys involve two trained observers visiting the largest gull colony on each island to: (1) obtain information on the numbers of nests, their location, and contents (*i.e.*, eggs or chicks); (2) determine the onset of laying, distribution, abundance, and predation of gull nests and eggs; and (3) record the proximity of other species relative to colony locations.

The observers would access each island using a kayak, a 32.8 to 39.4-foot (ft) (10 to 12 meter (m)) motorboat, or a 12 ft (4 m) inflatable rowing dinghy. The landing craft's transit speed would not exceed 4 knots (4.6 miles per hour (mph)). Ground surveys

generally last from 30 minutes to up to two hours depending on the size of the island and the number of nesting gulls. Glacier Bay NP will discontinue ground surveys after they detect the first hatchling to minimize disturbance to the gull colonies.

*Vessel-Based Surveys:* These surveys involve two trained observers observing and counting the number of adult and fledgling gulls from the deck of a motorized vessel which would transit around each island at a distance of approximately 328 ft (100 m) to avoid flushing the birds from the colonies. Vessel-based surveys generally last from 30 minutes to up to two hours depending on the size of the island and the number of nesting gulls.

#### *Comments and Responses*

We published a notice of receipt of Glacier Bay NP's application and proposed Authorization in the **Federal Register** (81 FR 15684, March 24, 2016). During the 30-day comment period, we received one comment letter from the Marine Mammal Commission (Commission) which recommended that we issue the requested Authorization, provided that Glacier Bay NP carries out the required monitoring and mitigation measures as described in the notice of the proposed authorization (81 FR 15684, March 24, 2016) and the application. We have included all measures proposed in the notice of the proposed authorization (81 FR 15684, March 24, 2016) in the final Authorization.

We also received a comment letter from one private citizen who opposed the authorization on the basis that NMFS should not allow any Authorizations for harassment. We considered the commenter's general opposition to Glacier Bay NP's activities and to our issuance of an Authorization; however, the Authorization, described

in detail in the **Federal Register** notice of the proposed Authorization (81 FR 15684, March 24, 2016) includes mitigation and monitoring measures to effect the least practicable impact to marine mammals and their habitat. Further, it is our responsibility to determine whether the activities will have a negligible impact on the affected species or stocks; will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, where relevant; and to prescribe the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, as well as monitoring and reporting requirements.

Regarding the commenter's opposition to authorizing harassment, the MMPA allows U.S. citizens (which includes Glacier Bay NP) to request take of marine mammals incidental to specified activities, and requires us to authorize such taking if we can make the necessary findings required by law and if we set forth the appropriate prescriptions. As explained throughout the **Federal Register** notice (81 FR 15684, March 24, 2016) we made the necessary preliminary findings under 16 U.S.C. 1361(a)(5)(D) to support issuance of Authorization.

### **Description of Marine Mammals in the Area of the Specified Activity**

The marine mammals most likely to be harassed incidental to conducting seabird monitoring and research are Pacific harbor seals. We do not anticipate harassment of Steller sea lions due to the researchers avoiding any site with Steller sea lions present.

NMFS refers the public to the Glacier Bay NP's application and the 2015 NMFS Marine Mammal Stock Assessment Report available online at:

*<http://www.nmfs.noaa.gov/pr/sars/species.htm>* for further information on the biology and local distribution of these species.

### **Other Marine Mammals in the Proposed Action Area**

Northern sea otters (*Enhydra lutris kenyoni*) and polar bears (*Ursis maritimus*) listed as threatened under the Endangered Species Act could occur in the proposed area. The U.S. Fish and Wildlife Service manages these species and we do not consider them further in this notice of issuance of an Authorization.

### **Potential Effects of the Specified Activities on Marine Mammals**

Acoustic and visual stimuli generated by: (1) noise generated by kayak, motorboat, or dinghy approaches and departures; (2) human presence during seabird monitoring and research activities, have the potential to cause Pacific harbor seals hauled out on Boulder, Lone, and Flapjack Islands, and Geikie Rock to flush into the surrounding water or to cause a short-term behavioral disturbance for marine mammals.

We expect that acoustic and visual stimuli resulting from the proposed activities have the potential to harass marine mammals. We also expect that these disturbances would be temporary and result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of harbor seals.

We included a summary and discussion of the ways that the types of stressors associated with Glacier Bay NP's specified activities (*i.e.*, visual and acoustic disturbance) have the potential to impact marine mammals in the notice of proposed authorization (81 FR 15684, March 24, 2016).

*Vessel Strike*: The potential for striking marine mammals is a concern with vessel traffic. However, it is highly unlikely that the use of small, slow-moving kayaks or boats to access the research areas would result in injury, serious injury, or mortality to any marine mammal. Typically, the reasons for vessel strikes are fast transit speeds, lack of



maneuverability, or not seeing the animal because the boat is so large. Glacier Bay NP's researchers will access areas at slow transit speeds in easily maneuverable kayaks or small boats negating any chance of an accidental strike.

*Rookeries:* No monitoring or research activities would occur on pinniped rookeries and breeding animals are concentrated in areas where researchers would not visit. Therefore, we do not expect mother and pup separation or crushing of pups during flushing.

### **Anticipated Effects on Marine Mammal Habitat**

We considered these impacts in detail in the notice for the proposed authorization (81 FR 15684, March 24, 2016). Briefly, we do not anticipate that the proposed research would result in any temporary or permanent effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (i.e., fish and invertebrates). While NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to motorboat operations or human presence, this impact to habitat is temporary and reversible. NMFS considered these as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice. Based on the preceding discussion, NMFS does not anticipate that the proposed activity would have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

### **Mitigation**

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). Applications for incidental take authorizations must include the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact on the affected species or stock and their habitat (50 CFR 216.104(a)(11)).

The Glacier Bay NP has reviewed the following source documents and has incorporated a suite of proposed mitigation measures into their project description.

(1) Recommended best practices in Womble *et al.* (2013); Richardson *et al.* (1995); Pierson *et al.* (1998); and Weir and Dolman, (2007).

(2) To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities Glacier Bay NP and/or its designees has proposed to implement the following mitigation measures for marine mammals:

- Perform pre-survey monitoring before deciding to access a study site;
- Avoid accessing a site based on a pre-determined threshold number of animals present; sites used by pinnipeds for pupping; or sites used by Steller sea lions;
- Perform controlled and slow ingress to the study site to prevent a stampede and select a pathway of approach to minimize the number of marine mammals harassed;

- Monitor for offshore predators at study sites. Avoid approaching the study site if killer whales (*Orcinus orca*) are present. If Glacier Bay NP and/or its designees see predators in the area, they must not disturb the pinnipeds until the area is free of predators.
- Maintain a quiet research atmosphere in the visual presence of pinnipeds.

*Pre-Survey Monitoring:* Prior to deciding to land onshore to conduct the study, the researchers would use high-powered image stabilizing binoculars from the watercraft to document the number, species, and location of hauled out marine mammals at each island. The vessels would maintain a distance of 328 to 1,640 ft (100 to 500 m) from the shoreline to allow the researchers to conduct pre-survey monitoring. During every visit, the researchers will examine each study site closely using high powered image stabilizing binoculars before approaching at distances of greater than 500 m (1,640 ft) to determine and document the number, species, and location of hauled out marine mammals.

*Site Avoidance:* Researchers would decide whether or not to approach the island based on the species present, number of individuals, and the presence of pups. If there are high numbers (more than 25) harbor seals hauled out (with or without young pups present), any time pups are present, or any time that Steller sea lions are present, the researchers will not approach the island and will not conduct gull monitoring research.

*Controlled Landings:* The researchers would determine whether to approach the island based on the number and type of animals present. If the island has 25 or fewer individuals without pups, the researchers would approach the island by motorboat at a speed of approximately 2 to 3 knots (2.3 to 3.4 mph). This would provide enough time for any marine mammals present to slowly enter the water without panic or stampede.

The researchers would also select a pathway of approach farthest from the hauled out harbor seals to minimize disturbance.

*Minimize Predator Interactions:* If the researchers visually observe marine predators (*i.e.* killer whales) present in the vicinity of hauled out marine mammals, the researchers would not approach the study site.

*Noise Reduction Protocols:* While onshore at study sites, the researchers would remain vigilant for hauled out marine mammals. If marine mammals are present, the researchers would move slowly and use quiet voices to minimize disturbance to the animals present.

### **Mitigation Conclusions**

NMFS has carefully evaluated Glacier Bay NP's proposed mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to motorboat operations or visual presence that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals exposed to motorboat operations or visual presence that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to motorboat operations or visual presence that we expect to result in the take of marine mammals (this goal may contribute to 1 above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on the evaluation of Glacier Bay NP's proposed measures, NMFS has determined that the proposed mitigation measures provide the means of effecting the least

practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

### **Monitoring**

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth “requirements pertaining to the monitoring and reporting of such taking.” The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for Authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that we expect to be present in the proposed action area. Glacier Bay NP submitted a marine mammal monitoring plan in section 13 of their Authorization application. NMFS or the Glacier Bay NP has not modified or supplemented the plan based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in our understanding of the likely occurrence of marine mammal species in the vicinity of the action, (*i.e.*, presence, abundance, distribution, and/or density of species).

2. An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammal species to any of the potential stressor(s) associated with the action (*e.g.*, sound or visual stimuli), through better understanding of one or more of the following: the action itself and its environment (*e.g.*, sound source characterization, propagation, and ambient noise levels); the affected species (*e.g.*, life history or dive

pattern); the likely co-occurrence of marine mammal species with the action (in whole or part) associated with specific adverse effects; and/or the likely biological or behavioral context of exposure to the stressor for the marine mammal (*e.g.*, age class of exposed animals or known pupping, calving or feeding areas).

3. An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.*, at what distance or received level).

4. An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: the long-term fitness and survival of an individual; or the population, species, or stock (*e.g.* through effects on annual rates of recruitment or survival).

5. An increase in our understanding of how the activity affects marine mammal habitat, such as through effects on prey sources or acoustic habitat (*e.g.*, through characterization of longer-term contributions of multiple sound sources to rising ambient noise levels and assessment of the potential chronic effects on marine mammals).

6. An increase in understanding of the impacts of the activity on marine mammals in combination with the impacts of other anthropogenic activities or natural factors occurring in the region.

7. An increase in our understanding of the effectiveness of mitigation and monitoring measures.

8. An increase in the probability of detecting marine mammals (through improved technology or methodology), both specifically within the safety zone (thus allowing for

more effective implementation of the mitigation) and in general, to better achieve the above goals.

As part of its Authorization application, Glacier Bay NP proposes to sponsor marine mammal monitoring during the project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the MMPA.

The Glacier Bay NP researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations on pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates and location of the researcher's activities and the number and type of species present. The researchers would document the behavioral state of animals present, and any apparent disturbance reactions or lack thereof.

Glacier Bay NP can add to the knowledge of pinnipeds in the proposed action area by noting observations of: (1) unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Monitoring results from the IHA issued on May 18, 2015 IHA indicated that the three survey sites were accessed a total of 15 times with 57 takes of harbor seals. Glacier Bay NP had been authorized to take 500 harbor seals.

If at any time injury, serious injury, or mortality of the species for which take is authorized should occur, or if take of any kind of any other marine mammal occurs, and



such action may be a result of the proposed land survey, Glacier Bay NP would suspend research and monitoring activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

### **Encouraging and Coordinating Research**

Glacier Bay NP actively monitors harbor seals at breeding and molting haul out locations to assess trends over time. This monitoring program involves collaborations with biologists from the Alaska Department of Fish and Game, and the National Marine Mammal Laboratory. Glacier Bay NP will continue these collaborations and encourage continued or renewed monitoring of marine mammal species. Additionally, they would report vessel-based counts of marine mammals, branded, or injured animals, and all observed disturbances to the appropriate state and federal agencies.

### **Reporting**

Glacier Bay NP will submit a draft monitoring report to NMFS no later than 90 days after the expiration of the Incidental Harassment Authorization. The report will describe the operations conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will provide:

1. A summary and table of the dates, times, and weather during all research activities.
2. Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities. Report the numbers of disturbances, by species and age, according to a three-point scale of intensity including: (1) Head orientation in

response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, or changing from a lying to a sitting position and/or slight movement of less than 1 meter; “alert”; (2) Movements in response to or away from disturbance, typically over short distances (1-3 meters) and including dramatic changes in direction or speed of locomotion for animals already in motion; “movement”; and (3) All flushes to the water as well as lengthier retreats (>3 meters); “flight”.

3. An estimate of the number (by species) of marine mammals exposed to acoustic or visual stimuli associated with the research activities.

4. A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.*, vessel-strike, stampede, etc.), Glacier Bay NP shall immediately cease the specified activities and immediately report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and the Alaska Regional Stranding Coordinator at (907) 586-7248. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including water depth, if applicable);
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);

- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Glacier Bay NP shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. We will work with Glacier Bay to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Glacier Bay NP may not resume their activities until notified by us via letter, email, or telephone.

In the event that Glacier Bay NP discovers an injured or dead marine mammal, and the lead researcher determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as we describe in the next paragraph), Glacier Bay NP will immediately report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and the Alaska Regional Stranding Coordinator at (907) 586-7248. The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We will work with Glacier Bay NP to determine whether modifications in the activities are appropriate.

In the event that Glacier Bay NP discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.*, previously wounded animal, carcass with

moderate to advanced decomposition, or scavenger damage), Glacier Bay will report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and the Alaska Regional Stranding Coordinator at (907) 586-7248 within 24 hours of the discovery. Glacier Bay NP researchers will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. Glacier Bay NP can continue their research activities.

### **Estimated Take by Incidental Harassment**

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. NMFS expects that the proposed mitigation and monitoring measures would minimize the possibility of injurious or lethal takes. NMFS considers the potential for take by injury, serious injury, or mortality as remote. NMFS expects that the presence of Glacier Bay NP personnel could disturb animals hauled out and that the animals may alter their behavior or attempt to move away from the researchers.

NMFS considers an animal to have been harassed if it moved greater than 1 m (3.3 ft) in response to the surveyors' presence or if the animal was already moving and changed direction and/or speed, or if the animal flushed into the water. NMFS does not consider animals that became alert without such movements as harassed.

Based on pinniped survey counts conducted by Glacier Bay NP (*e.g.*, Mathews & Pendleton, 2006; Womble *et al.*, 2010), NMFS estimates that the research activities could potentially affect by Level B behavioral harassment 500 harbor seals over the course of the Authorization (Table 1). This estimate represents 6.9 percent of the Glacier Bay/Icy Strait stock of harbor seals and accounts for a maximum disturbance of 25 harbor seals each per visit at Boulder, Lone, and Flapjack Islands, and Geikie Rock, Alaska over a maximum level of five visits.

**Table 1. Estimates of the possible numbers of marine mammals exposed to acoustic and visual stimuli during the proposed research activities on Boulder, Lone, and Flapjack Islands, and Geikie Rock, Alaska, May through September, 2016.**

Species	Est. Number of Individuals Exposed	Proposed Take Authorization	Percent of Species or Stock <sup>1</sup>	Population Trend <sup>2</sup>
Harbor seal	500	500	6.9	Declining
Steller sea lion	0	0	0	Increasing

<sup>1</sup> Table 1 in this notice lists the stock species abundance estimates that NMFS used to calculate the percentage of species/stock.

<sup>2</sup> The population trend information is from Muto and Angliss, 2015.

Harbor seals tend to haul out in small numbers (on average, less than 50 animals) at most sites with the exception of Flapjack Island (Womble, Pers. Comm.). Animals on Flapjack Boulder Islands generally haul out on the south side of the Islands and are not located near the research sites located on the northern side of the Islands. Aerial survey maximum counts show that harbor seals sometimes haul out in large numbers at all four locations (see Table 2 in Glacier Bays NP's application), and sometimes individuals and mother/pup pairs occupy different terrestrial locations than the main haulout (J. Womble, personal observation).

Considering the conservation status for the Western stock of the Steller sea lion, the Glacier Bay NP researchers would not conduct ground-based or vessel-based surveys

if they observe Steller sea lions before accessing Boulder, Lone, and Flapjack Islands, and Geikie Rock. Thus, NMFS expects no takes to occur for this species during the proposed activities.

NMFS does not propose to authorize any injury, serious injury, or mortality.

NMFS expect all potential takes to fall under the category of Level B harassment only.

## **Analysis and Determinations**

### *Negligible Impact*

NMFS has defined “negligible impact” in 50 CFR 216.103 as “. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.” A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

To avoid repetition, the discussion below applies to all four species discussed in this notice. In making a negligible impact determination, we consider:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment;

- The context in which the takes occur (*e.g.*, impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
  - The status of stock or species of marine mammals (*i.e.*, depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
  - Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

For reasons stated previously in this document and based on the following factors, NMFS does not expect Glacier Bay NP's specified activities to cause long-term behavioral disturbance, abandonment of the haul-out area, injury, serious injury, or mortality:

1. The takes from Level B harassment would be due to potential behavioral disturbance. The effects of the research activities would be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

2. The availability of alternate areas for pinnipeds to avoid the resultant acoustic and visual disturbances from the research operations. Anecdotal observations and results from previous monitoring reports also show that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after Glacier Bay NP conducted their research activities.

3. There is no potential for large-scale movements leading to injury, serious injury, or mortality because the researchers will delay ingress into the landing areas only after the pinnipeds have slowly entered the water.

4. Glacier Bay NP would limit access to Boulder, Lone, and Flapjack Islands, and Geikie Rock when there are high numbers (more than 25) harbor seals hauled out (with or without young pups present), any time pups are present, or any time that Steller sea lions are present, the researchers will not approach the island and will not conduct gull monitoring research.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of Glacier Bay NP's proposed activities and we do not propose to authorize injury, serious injury, or mortality. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed seabird and pinniped research activities to avoid the resultant acoustic and visual disturbances. Further, these proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, we do not expect the activities to impact annual rates of recruitment or survival.

NMFS does not expect pinnipeds to permanently abandon any area surveyed by researchers, as is evidenced by continued presence of pinnipeds at the sites during annual seabird monitoring. In summary, NMFS anticipates that impacts to hauled-out harbor seals during Glacier Bay NP's research activities would be behavioral harassment of limited duration (*i.e.*, up to two hours per visit) and limited intensity (*i.e.*, temporary flushing at most). NMFS does not expect stampeding, and therefore injury or mortality,



to occur (see “Mitigation” for more details).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS finds that the total marine mammal take from Glacier Bay NP’s proposed research activities will not adversely affect annual rates of recruitment or survival and therefore will have a negligible impact on the affected species or stocks

#### *Small Numbers*

As mentioned previously, NMFS estimates that Glacier Bay NP’s activities could potentially affect, by Level B harassment only, one species of marine mammal under our jurisdiction. For harbor seals, this estimate is small (6.9 percent) relative to the population size.

Based on the analysis contained in this notice of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that Glacier Bay NP’s proposed activities would take small numbers of marine mammals relative to the populations of the affected species or stocks.

#### **Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses**

There are no relevant subsistence uses of marine mammals implicated by this action. Glacier Bay National Park prohibits subsistence harvest of harbor seals within the Park (Catton, 1995).

#### **Endangered Species Act (ESA)**

NMFS does not expect that Glacier Bay NP's proposed research activities (which includes mitigation measures to avoid harassment of Steller sea lions) would affect any species listed under the ESA. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

### **National Environmental Policy Act (NEPA)**

In 2014, NMFS prepared an Environmental Assessment (EA) analyzing the potential effects to the human environment from NMFS' issuance of an Authorization to Glacier Bay NP for their seabird research activities.

In September 2014, NMFS issued a Finding of No Significant Impact (FONSI) on the issuance of an Authorization for Glacier Bay NP's research activities in accordance with section 6.01 of the NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). Glacier Bay NP's proposed activities and impacts for 2016 are within the scope of the 2014 EA and FONSI. NMFS provided relevant environmental information to the public through a previous notice for the proposed Authorization (79 FR 32226, June 4, 2014) and considered public comments received in response prior to finalizing the 2014 EA and deciding whether or not to issue a Finding of No Significant Impact (FONSI). NMFS has performed an environmental review of the 2014 EA and other relevant documents under NEPA and CEQ guidelines in determining that there are no new direct, indirect, or cumulative impacts to the human and natural environment associated with the Authorization requiring evaluation in a supplemental EA and NMFS.

### **Authorization**

As a result of these determinations, we have issued an Incidental Harassment

Authorization to Glacier Bay National Park for conducting seabird research from May 16, 2016 through September 30, 2016, provided they incorporate the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: May 26, 2016.

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Perry Gayaldo,

Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

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